

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1656**

State of Minnesota,
Respondent,

vs.

Dwayne Andre Garner,
Appellant.

**Filed September 8, 2025
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-24-6922

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Britta Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Reilly,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his third-degree criminal-sexual-conduct conviction, arguing that the evidence was insufficient to prove that he used coercion to accomplish sexual penetration. In a pro se supplemental brief, appellant argues that the district court committed plain error by failing to instruct the jury on how to treat relationship evidence. We affirm.

FACTS

In March 2024, respondent State of Minnesota charged appellant Dwayne Andre Garner with third-degree criminal sexual conduct—using coercion to accomplish sexual penetration, in violation of Minn. Stat. § 609.344, subd. 1(a) (Supp. 2021).

At Garner’s jury trial, F.B. testified that she met Garner in early 2022 through her employment as a property manager. Garner’s employer had a vendor’s contract to provide cleaning services at the property F.B. managed.

In April 2022, F.B. and Garner began dating. They had their third date on April 24, 2022, at F.B.’s home. Prior to this date, F.B. and Garner had only kissed and discussed moving slowly with their physical relationship. F.B. testified about the date:

We were watching a movie. We were kissing at one point. Then we stopped kissing and went back to watching a movie. He got up. I thought he was getting ready to go to the bathroom. Instead, he pulled down my shorts. I said, “No. Stop.” I pulled my shorts back up. He pulled my shorts down again. I said, “Stop. What are you doing?” I pulled my shorts back up. He pulled my shorts back down again. I said, “No.” He said [my name]. It was startling. I got scared. And so I just relented.

. . . .

I stopped fighting it. He forced oral sex on me. He put his hands [and fingers] in my vagina and in my bottom and kept performing oral sex on me.

F.B. testified that she was “hurt and scared,” and did not fight because she was “shocked,” “flustered,” and did not “want to get hurt.” After Garner left, F.B. went to the bathroom and saw that she was bleeding.

Garner begged F.B. to give him another chance, and they went on a couple more dates. After one of those dates, Garner spent the night at F.B.’s home and nothing sexual happened. The next morning, however, Garner asked F.B. for a kiss before he left. As F.B. kissed Garner, he pulled her shorts down. F.B. told Garner to stop, but he stated something to the effect of, “I see I need to be forceful.” Garner grabbed F.B., dragged her into the bedroom, threw her on the bed, and attempted to penetrate her with his flaccid penis. F.B. felt “frozen.”

After Garner left, F.B. called him to end the relationship. But F.B. continued to communicate with Garner because she wanted to appease him. F.B. went out with Garner again but told him that they were only friends. When Garner tried to kiss F.B., she pushed him away and he said: “Don’t ever deny me in public.” F.B. gave up on any kind of relationship. In August, the vendor’s contract was terminated and Garner no longer worked at F.B.’s property.

In September 2022, F.B. was served with a harassment restraining order (HRO) prohibiting her from contacting Garner after he claimed that she had harassed him at work. F.B. believed that Garner obtained the HRO in retaliation because of the contract

termination. At the HRO hearing, F.B. testified about Garner’s sexual assaults. F.B. then reported the assaults to the police.

Garner did not testify. The jury found Garner guilty as charged. The district court sentenced Garner to 130 months in prison. This appeal followed.

DECISION

Sufficiency of the evidence

Garner argues that the evidence was insufficient for the jury to find that he used coercion to sexually penetrate F.B.

When reviewing a claim of insufficient evidence, appellate review is limited to a careful review of the record to determine “whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jur[y] to reach the verdict which [it] did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). This court “assume[s] that the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted). This court will not overturn a conviction if the jury could have reasonably found the defendant guilty, giving due regard to the presumption of innocence and the state’s burden of proving an offense beyond a reasonable doubt. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

The jury found Garner guilty of third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(a). In finding Garner guilty, the jury found that he “engage[d] in sexual penetration with another person . . . us[ing] coercion to accomplish the penetration.” Minn. Stat. § 609.344, subd. 1(a).

“Coercion” means the use by the actor of words or circumstances that cause the complainant reasonably to fear the infliction of bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant to accomplish the act. Proof of coercion does not require proof of a specific act or threat.

Minn. Stat. § 609.341, subd. 14 (2020). To prove coercion, the state does not need to show that the defendant “us[ed] actual force nor verbalized threats of force.” *State v. Carter*, 289 N.W.2d 454, 455 (Minn. 1979). The state must show that the defendant “intentionally created an atmosphere of fear which caused [the] complainant to finally submit to [the defendant’s] sexual advances.” *Id.*

Here, the evidence was sufficient to sustain Garner’s conviction. “[A] conviction can rest on the uncorroborated testimony of a single credible witness.” *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). And in criminal-sexual-conduct trials, “the testimony of a victim need not be corroborated.” Minn. Stat. § 609.347, subd. 1 (2024).

F.B. testified that Garner pulled her shorts down, and she told him to stop and said “no” at least three times. *See State v. Gamez*, 494 N.W.2d 84, 87 (Minn. App. 1992) (stating evidence sufficient to establish coercion when victim told appellant to stop but he pulled up her nightgown and continued sexual advances), *rev. denied* (Minn. Feb. 23, 1993). F.B. was startled and scared and “stopped fighting” because she did not “want to get hurt.” *See State v. Woolridge Carter*, 986 N.W.2d 7, 13 (Minn. App. 2023) (stating evidence sufficient to establish coercion when, among other things, victim testified she did not resist because she was afraid that she would be physically harmed), *aff’d on other*

grounds, 9 N.W.3d 839 (Minn. 2024). When F.B. went to the bathroom, she saw that she was bleeding. The evidence shows that Garner used coercion to sexually penetrate F.B. and is thus sufficient to sustain his conviction.

Pro se argument

In a pro se supplemental brief, Garner argues that the district court failed to sua sponte instruct the jury on how to use relationship evidence.

Garner did not object at trial. The failure to object in district court generally results in forfeiture of appellate review of a challenge to jury instructions. *See State v. Goodloe*, 718 N.W.2d 413, 422 (Minn. 2006). But this court may consider a forfeited claim if the appellant can establish plain error. *State v. Zinski*, 927 N.W.2d 272, 275 (Minn. 2019). Under plain-error review, an appellant must establish an error that was plain and that affected his substantial rights. *State v. Kuhlmann*, 806 N.W.2d 844, 852 (Minn. 2011). If any one of the prongs is not satisfied, the claim fails, and this court need not continue the analysis. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). If all three prongs are met, this court considers “whether reversal is required to ensure the fairness, integrity, or public reputation of the judicial proceedings.” *State v. Coleman*, 957 N.W.2d 72, 77 (Minn. 2021) (quotation omitted).

Here, the district court instructed the jury several times on how to use relationship evidence. After F.B. testified about an incident that occurred after the April 24 offense, the district court instructed the jury:

So members of the jury, you just heard some testimony
about an incident on May 8th, [2022.]

....

Now, this evidence is being offered for a very limited purpose of demonstrating the nature and the extent of the relationship between the [d]efendant and [F.B.] Okay? And that's in order to assist you in determining whether the [d]efendant committed the act with which [he] is charged in [the] complaint.

The [d]efendant is not being tried and may not be convicted of any behavior, other than the charged offense. You're not . . . to convict the [d]efendant on the basis of the conduct on May 8th of 2022. To do so might result in unjust double punishment. Okay?

So this testimony on this subsequent event is being given to you for that limited purpose. Okay?

The district court read the instruction again regarding F.B.'s testimony about incidents that occurred when F.B. and Garner were working together. The district court also included a similar instruction in final jury instructions. Because the district court properly instructed the jury on how to use the relationship evidence, Garner has not shown an error, and we need not continue the analysis.

Affirmed.